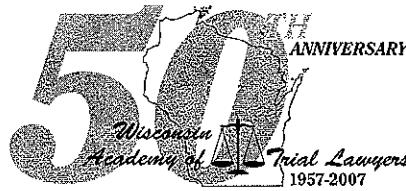


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**WISCONSIN STATE SENATE
COMMITTEE ON JUDICIARY AND CORRECTIONS
SENATOR LENA TAYLOR, CHAIR**

**PUBLIC HEARING ON
SENATE BILL 126
JULY 11, 2007**

**TESTIMONY OF
ROBERT L. JASKULSKI
ON BEHALF OF THE
WISCONSIN ACADEMY OF TRIAL LAWYERS**

Good morning, Senator Taylor and members of the Committee. My name is Robert L. Jaskulski. I am a shareholder in the Milwaukee law firm, Habush, Habush & Rottier, and I currently serve as President of the Wisconsin Academy of Trial Lawyers. On behalf of the Academy, I thank you for the opportunity to appear today to testify in favor to Senate Bill 126.

The Academy is established as a voluntary trial bar, a non-profit corporation with approximately 1,000 members located throughout the state. The objectives and goals of the Academy are the preservation of the civil jury trial system, the improvement of the administration of justice, the provision of facts and information for legislative action, and the training of lawyers in all fields and phases of advocacy.

Senate Bill 126 eliminates the 180-day notice requirement for medical malpractice claims filed against doctors who are state employees under Wis. Stat. § 893.82. Under current law, the injured patients must notify the state

of a potential medical malpractice claim within 180-days of a discovered injury if they were treated by physicians at a state health facility (such as UW Hospital & Clinics or UW Health/Physicians Plus). Privately run health systems are subject to a general 3-year statute of limitations for the same claims.¹

In medical malpractice cases, the 180-day notice requirement is particularly harsh. It takes many patients longer than six months to recover before they even begin to think about contacting a lawyer. There can also be difficulty in getting the patient's records. It can take months to receive the patient's medical records, which leaves little time to properly evaluate the potential malpractice claim. Having to explain this harsh rule to families is one of the saddest situations our lawyers confront.

Here in Dane County, there is a confusing maze of coverages, which can lead to a trap for the unwary. In 1995 the UW Hospital became an "Authority" and is no longer state-owned. However, the physicians practicing at the UW Hospital remain state employees and are covered by the 180-day notice requirement. Second, the 200 doctors of Physicians Plus Medical Group merged with UW Medical Foundation on February 1, 1998, and became state employees. This means patients with a potential claim have less time to file a medical malpractice action against a Physicians Plus doctor.

An additional wrinkle was just added to the mix, when last week the Wisconsin Supreme Court ruled in *Rouse v. Theda Clark Medical Center Inc., et al.* 2007 WI 87, that the University of Wisconsin Hospital and Clinic Authority (UWHCA) is a "political corporation" under Wis. Stat. § 893.80 and claimants are subject to the 180-day notice provisions in that statute. This means that residents and other Authority employees (e.g. nurses or pharmacists) fall under Wis. Stat. § 893.80, not § 893.82. This creates a dangerous maze for the unwary. How does one know if they are seeing a resident or a doctor? Given this recent ruling, we urge an amendment to SB 126 to make sure that if any UW Hospital employee treats someone, there is a three-year statute of limitations, whether the employee is under § 893.82 (state employees) or § 893.80 (authority employees).

¹ Injured minors are subject to a longer statute of limitation under Wis. Stat. § 893.56.

As a patient, trying to sort out this quagmire is very difficult, especially within 180 days. It is a situation wrought with confusion both for the patient and attorney. Patients have no idea when they are being treated, who's a state employee, who's an Authority employee or who isn't. Often this cannot be determined until there is discovery. Patients shouldn't be penalized by losing their right to proceed in court for failure to navigate through this quagmire in 180 days.

With the change in adding an amendment for § 893.80 employees to Senate Bill 126, we urge its passage.